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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-605

Filed 2 April 2024

N.C. Industrial Commission, No. TA-29211

TRAVIS WAYNE BAXTER, Plaintiff,

v.

NORTH CAROLINA STATE HIGHWAY PATROL TROOP F DISTRICT V, *et al.*,
Defendants.

Appeal by Plaintiff from Order entered 25 April 2023 by the Full Commission of the North Carolina Industrial Commission. Heard in the Court of Appeals 5 March 2024.

Travis Wayne Baxter, Pro se, Plaintiff-Appellant.

Attorney General Joshua H. Stein, by Assistant Attorney General David D. Larson, Jr., for Defendant-Appellee.

HAMPSON, Judge.

Factual and Procedural Background

Travis Wayne Baxter (Plaintiff) initiated this case by filing a claim with the North Carolina Industrial Commission pursuant to the Tort Claims Act against North Carolina State Highway Patrol Troop F District 5 (Defendant). In his Affidavit

Opinion of the Court

to the Industrial Commission (“Complaint”), Plaintiff alleged that he was arrested in a “staged [coerced] scene” in which unlocked handcuffs that were “[meant] to come un-attached” fell off his hands, allowing a State Highway Patrol Trooper to tase him. He alleged that this encounter was part of a “20 year conspiracy” and asserted claims for malicious injury by use of incendiary, attempted murder, excessive force, trespass, abuse of process, wrongful arrest, assault, injury to property, and common law conspiracy. Defendant moved to dismiss Plaintiff’s claims for failure to state a claim and lack of subject matter jurisdiction, and after a hearing the Deputy Commissioner dismissed all claims.

Plaintiff appealed to the Full Commission, which entered an order dismissing Plaintiff’s case for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the North Carolina Rules of Civil Procedure. Plaintiff appeals.

Issues

The dispositive issue on appeal is whether the Industrial Commission properly granted Defendant’s Motion to Dismiss for lack of subject matter jurisdiction over Plaintiff’s claims.

Analysis

Under the Tort Claims Act, “[t]he North Carolina Industrial Commission is . . . constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State.” N.C. Gen. Stat. § 143-291(a)

(2023). This represents “a limited waiver of immunity for negligence claims against all departments, institutions, and agencies of the State” which “must be strictly construed.” *Meyer v. Walls*, 347 N.C. 97, 104, 489 S.E.2d 880, 884 (1997) (citing *Guthrie v. N.C. State Ports Auth.*, 307 N.C. 522, 537-38, 299 S.E.2d 618, 627 (1983)). “The Tort Claims Act . . . provides for the State’s liability only for the negligent acts or omissions of its employees.” *Jackson v. N.C. Dep’t of Crime Control & Pub. Safety*, 97 N.C. App. 425, 431, 388 S.E.2d 770, 774 (1990) (citing *Phillips v. N.C. Dep’t Transp.*, 80 N.C. App. 135, 341 S.E.2d 339 (1986)). The Act does not permit recovery for intentional injuries, see *Jenkins v. Dep’t of Motor Vehicles*, 244 N.C. 560, 94 S.E.2d 577 (1956), and the Commission therefore “does not have jurisdiction over claims arising from intentional acts.” *Fennell ex rel. Estate of Fennell v. N.C. Dep’t of Crime Control & Pub. Safety*, 145 N.C. App. 584, 592, 551 S.E.2d 486, 492 (2001).

We review the trial court’s dismissal for lack of subject matter jurisdiction *de novo*. *Hunt v. Dep’t of Pub. Safety*, 260 N.C. App. 40, 44, 817 S.E.2d 257, 260 (2018).

Plaintiff alleges in his Complaint several intentional torts and constitutional claims falling outside of the jurisdiction of the Industrial Commission. He alleges that he was placed in handcuffs that were unlocked and “[meant] to come un-attached” from his hand, allowing a trooper to tase him. He lists among his theories of recovery malicious injury by use of incendiary, attempted murder, trespass, abuse of process, wrongful arrest, and common law conspiracy, none of which fall within the Commission’s purview. Likewise, in his Form T-44 noticing his appeal to the Full

Commission (“T-44”) Plaintiff alleges “5 intentional torts: battery, assault, false imprisonment, trespass to land, trespass to chattel, intentional infliction of emotional distress.”

Some of Plaintiff’s filings include bare allegations adopting some of the language of negligence claims. The Complaint states that “[t]rooper negligence and disregard for humanity caused damage” and lists excessive force alongside the intentional torts mentioned above. The Industrial Commission may hear claims for negligent application of excessive force. *Jackson*, 97 N.C. App. at 432, 388 S.E.2d at 774 (holding that when law enforcement agents intended to violently restrain the plaintiff but did not intend to use excessive force, evidence supported the conclusion that the application of excessive force was negligent and relief could be granted under the Tort Claims Act). In his T-44 he writes “positional asphyxia/sudden death in custody/training on taser duty of care/breach of duty/opening of flood gate.” However, it is clear from the hearing transcript that Plaintiff’s theories of liability do not stem from negligence, but from allegations of willful, intentional behavior.

We consider Plaintiff’s additional filings and statements made in the hearing before the Deputy Commissioner because, unlike when we review a motion to dismiss for failure to state a claim, “[i]n considering a motion to dismiss for lack of subject matter jurisdiction, it is appropriate for the court to consider and weigh matters outside of the pleadings.” *Holton v. Holton*, 258 N.C. App. 408, 414, 813 S.E.2d 649, 654 (2018) (citing *Doe v. Diocese of Raleigh*, 242 N.C. App. 42, 44 n.3, 776 S.E.2d 29,

33 n.3 (2015)). We are not bound by the Commission’s findings of jurisdictional fact and make our own independent findings of jurisdictional fact from consideration of all evidence in the record. *Capps v. Southeastern Cable*, 214 N.C. App. 225, 226-27, 715 S.E.2d 227, 229 (2011).

Our review of the record shows that Plaintiff’s only allegation of negligence relates to improperly securing the handcuffs placed upon him. While his Complaint states the handcuffs were “[meant] to come un-attached” during a “staged [coerced] scene,” in his T-44 he writes that “extra claims giving and additional information does not take away the fact that handcuffs are negligent and improper leading to injury” During the pretrial hearing Plaintiff stated:

And the negligence, *I’ve said from the get-go the negligence come from the handcuffs*. It’s all about breach—breach of procedure—or breach of what they were trained. The state . . . has an obligation and there—whatever that obligation may be there’s a breach and therefore I—there’s an injury that comes from it. And like I said, the handcuffs falling off, the evidence was turned in.

(emphasis added). In his brief to the Full Commission Plaintiff alleges that he “had handcuffs placed on him negligently.” Even disregarding the implication in the Complaint that officers intentionally put him in unlocked handcuffs that would fall off, allowing them to tase him, Plaintiff does not assert a cognizable theory of negligence. No injury resulted to Plaintiff from improperly fastened handcuffs. If Plaintiff were injured, it came as a result of being tased, an act that he at no point pleads or argues as negligent but as willful and malicious, for example in his

Complaint seeking relief for “malicious injury by use of incendiary.” Moreover, the Complaint describes the entire incident as “staged” and the result of a “20 year conspiracy” against Plaintiff. Plaintiff has not asserted a claim for negligence that would grant the Commission subject matter jurisdiction.

We also agree with the Commission that, to the extent Plaintiff’s Complaint asserts that he was subjected to an unlawful search and seizure, he has alleged violations of his constitutional rights not based in negligence, which are outside the scope of the Tort Claims Act. *See* N.C. Gen. Stat. § 143-291(a); *see also Medley v. N.C. Dep’t of Correction*, 330 N.C. 837, 843-44, 412 S.E.2d 654, 658-59 (1992) (distinguishing between claims of a constitutional nature and claims for negligence). The Industrial Commission therefore lacks jurisdiction to hear these claims. *Id.*

Plaintiff has also argued that Defendant failed to file responsive pleadings in a timely manner and is subject to default judgment. However, to secure a default judgment Plaintiff must show a factual basis upon which liability can be established. N.C. Gen. Stat. § 1A-1, Rule 55(f). Because Plaintiff has not asserted a claim upon which he can obtain relief, the Commission properly denied his motion for default judgment.

Conclusion

For the foregoing reasons, we affirm the order of the Industrial Commission dismissing Plaintiff’s claims without prejudice pursuant to Rule 12(b)(1) of the North Carolina Rules of Civil Procedure.

Opinion of the Court

AFFIRMED.

Judges GRIFFIN and STADING concur.

Report per Rule 30(e).